

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA**

State of Oklahoma, et al.,

05-CV-0329 GKF-SAJ

Plaintiffs,

**THIRD DECLARATION OF
DR. TIMOTHY J. SULLIVAN**

v.

Tyson Foods, Inc., et al.,

Defendants.

**IN SUPPORT OF DEFENDANTS'
JOINT MOTION TO ENFORCE
SCHEDULING ORDERS IN LIGHT OF
PLAINTIFFS' EXPERT
DISCLOSURE ABUSES**

I, Timothy J. Sullivan, PhD, hereby state as follows:

1. The Defendants retained me as an expert in this litigation to investigate water quality issues in the Illinois River Watershed (IRW) and the likely influences of land use on water quality in the IRW.
2. I have submitted two previous Declarations in this matter: the first dated February 7, 2008 with regard to the State's motion for preliminary injunction (Dkt. No. 1531-35-36.), and the second dated June 9, 2007 with regard to Defendants' request for an extension of time to work on the expert reports (Dkt. No. 1722-14). My experience and credentials are provided in the prior affidavits.
3. Many of the State's expert reports in this case relate to my areas of work. As a result, I have reviewed the expert reports submitted by Darren Brown, Berton Fisher, Bernard Engel, Meagan Smith, Scott Wells, Eugene Welch and Dennis Cooke, and Roger Olsen regarding a variety of IRW water quality issues.
4. I represented to the Court in my June Declaration that I have worked diligently to understand and analyze the voluminous data available about environmental conditions in the

IRW, but that my work had been hampered by the State's late and rolling productions of data. Because an analysis of water quality data depends on the relationship between samples taken at different times and place and under different conditions, when new data are added or information is supplied about missing information, much work must be re-done. The fact that the State has continued to provide large amounts of new and replacement data is a serious hindrance to our progress.

5. I have now made a preliminary review of Dr. Engel's new errata dated September 4, 2008. Because of the erroneous data Dr. Engel used in his original report, we will now need to go back to the beginning and reexamine Dr. Engel's entire report again to analyze the changes. I expect that some of the changes will matter to the calculations and conclusions and others will not, but the scale of the changes means that we must now reevaluate the entire report again and cannot rely on the extensive work we had already done. This reevaluation will take considerable time and effort.

6. The problems of delay are exacerbated because I cannot fully complete my work until Dr. Victor Bierman finishes his analyses of the State's models of the IRW and Lake Tenkiller. I am informed that Dr. Bierman believes that Dr. Engel's recent changes in his report on the State's models and in his supporting materials threaten to delay Dr. Bierman's work in analyzing those models, likely significantly. Any delay in the completion of Dr. Bierman's work would further delay the completion of my own work.

7. I have also reviewed the hundred-plus pages that Dr. Scott A. Wells made to his original report in his errata of August 26, 2008. These errata make substantial changes in his original report, and will require me to essentially go back to the beginning and start over in evaluating Dr. Wells' data, analyses, and conclusions.

8. The form in which Dr. Engel and Dr. Wells produced their errata also makes my task more difficult. Instead of providing a fully revised report including all the changes, Dr. Engel's and Dr. Wells' errata provides only the specific passages, chart, figures, or tables that each has altered. As a result, we have to try to piece together two separate documents to get a full picture of the "current" version of these experts' reports before we can even begin our reevaluation of the substance of the revised report, and in conducting that reevaluation we have to remember which parts of the original reports have been changed and which have not. The production of errata in this form, rather than providing both the errata and a revised report incorporating the changes, creates unnecessary additional work.

9. In addition, I understand from counsel that the State's attorneys have stated in a letter to the Defendants' attorneys that Dr. Engel's use of erroneous data will require Dr. Wells to rerun all of his model scenarios as well, and that Dr. Wells intends to issue still another report within several weeks. Any such additional report from Dr. Wells will once again make us go back to the beginning and will further delay our analysis. Because of the complexity of the calculations and the interrelatedness of the data, every time one of these State experts makes substantial changes in his report, we have to go through the whole evaluation again.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 11, 2008



Timothy J. Sullivan, PhD